

Via E-Mail

October 26, 2011

Corbin Davis
Clerk of the Court.
Michigan Supreme Court
P.O. Box 30052
Detroit, MI 48909

Re: ADM File No. 2002-24, July 19, 2011

Dear Mr. Davis:

I am writing to you in my capacity as general counsel for Honigman Miller Schwartz and Cohn LLP. For the reasons discussed below, we respectfully request that the Court not adopt the proposed amendments to MRPC 7.3 contained in ADM File No. 2002-24, dated July 19, 2011.

We believe that the proposed changes to MRPC 7.3 are, in several respects, overly broad and ambiguous. States that have adopted an advertising labeling requirement have narrowly applied that requirement to *targeted* direct solicitations. ABA Model Rule 7.3(c) also limits its labeling requirement to *targeted* direct mail. The labeling requirement in the proposed version of MRPC 7.3, however, would apply to *all* lawyer communications, including informational newsletters, seminar materials and brochures. We believe such labeling is unnecessary, burdensome and would not serve any public purpose. It, however, may have the unintended effect of causing notices of statutory and regulatory changes, developments in the law, and other worthwhile information distributed by many law firms to be ignored by persons who need such information on a timely basis.

Similarly, state rules that prohibit solicitation during a specific time period typically apply that restriction narrowly to claims involving *personal* injury or *wrongful* death. In contrast, the proposed version of MRPC 7.3 would prohibit communications to a "person" less than 30 days after *any* injury, death or accident. Assuming that "person" includes a company, this would have an adverse impact on the ability of Michigan lawyers to market their skills to companies in need of legal representation as a result of an injury that gives rise to a commercial dispute or a consumer class action lawsuit. As just one example, securities class action lawsuits are nearly always filed within 30 days of a significant decline in a company's stock price. Especially in today's multistate practice environment, the proposed time restriction would place Michigan lawyers at a substantial disadvantage while not solving any problem of which we are aware. We also note that ABA Model Rule 7.3 does not contain any waiting period.

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Finally, we believe that the Michigan Rules of Professional Conduct should only be modified to address specifically articulated problems or to bring Michigan's rules into conformity with national standards. Because the proposed amendments to MRPC 7.3 do not accomplish either of these goals, we respectfully request that the Court decline to adopt this proposal.

We appreciate the opportunity to submit our comments on ADM File No. 2002-24.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By


Mark A. Stern